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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,473	07/07/2006	David Mark Allison	G40.2-13290-US01	5905
490 7590 05/11/2010 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
SCHAPER, MICHAEL T				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
05/11/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,473

Applicant(s)

ALLISON, DAVID MARK

Examiner

MICHAEL T. SCHAPER

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 6-8, 23-26 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 6-8, 23-26, 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection. See below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6-8, 23-25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan (US 4905679) in view of Wevers (US 4444181).

As to claims 3, 6-8, 23-24, and 26, Morgan discloses a bone fixing device (10, see FIG. 1 ff) for fixing bone pieces together, the bone fixing device consisting of first and second fixing portions (left 12, right 12), each fixing portion comprising two annuli (see FIG. 1) each having a respective outer radius, the two annuli being located relative to each other so that their respective outer radii touch or overlap (see FIG. 1), and wherein each annulus of each fixing portion has a central hole capable of receiving a bone screw (see FIG. 1); and a collective connecting member formed integrally with the first and second fixing portions (see FIG. 1); wherein the fixing portions and the collective connecting member are arranged so that the collective connecting member

extends from respective annuli of the first and second fixing portions which are closest to each other (see FIG. 1); wherein the collective connecting member join the respective annuli from which they extend on a circumference of the annuli (see FIG. 1); wherein the first fixing portion comprises two annuli (see FIG. 1: 16,16) wherein the two annuli lie on a line (at section cut 2 of FIG. 1) extending through the centre of the fixing portions.

Morgan discloses the claimed invention except for wherein the collective connection member are a first and second connecting member, each connecting member extending directly to each of the first and second fixing portions and lying symmetrically about a line extending through a centre of the fixing portions, the connecting members being deformable to draw the fixing portions together wherein the connecting members substantially maintain their position after deformation; wherein the connecting members are deformable symmetrically with respect to the a line extending through the center of the pair-of fixing portions such that the fixing portions are drawn toward one another along the line; wherein the connecting members are parallel to each other prior to being deformed; wherein each connecting member has at least one point of weakness at which bending of the connecting member occurs in preference to elsewhere on the connecting member; wherein each of the at least one point of weakness is a necked portion of the respective connecting member; wherein prior to deformation a transverse distance between outer lateral edges of the connecting members is about the same as an outer diameter of an annulus.

Wevers discloses a bone fixing device wherein the collective connection member are a first and second connecting member (10,11), each connecting member extending directly to each of the first and second fixing portions and lying symmetrically about the line extending through a centre of the fixing portions (see FIG. 1), the connecting members being deformable to draw the fixing portions together wherein the connecting members substantially maintain their position after deformation (see FIG. 1); wherein the connecting members are deformable symmetrically with respect to the a line extending through the center of the pair-of fixing portions such that the fixing portions are drawn toward one another along the line (see FIG. 1); wherein the connecting members are parallel to each other prior to being deformed (see FIG. 1); wherein each connecting member has at least one point of weakness (at 8) at which bending of the connecting member occurs in preference to elsewhere on the connecting member; wherein each of the at least one point of weakness is a necked portion of the respective connecting member (at 8); wherein prior to deformation a transverse distance between outer lateral edges of the connecting members is about the same as an outer diameter of an annulus (see FIG. 1) for an easier deforming via crimping procedure with pliers due to the necked portion.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to have modified the device of Morgan with a bone fixing device wherein the collective connection member are a first and second connecting member, each connecting member extending directly to each of the first and second fixing portions and lying symmetrically about the line extending through a centre of the fixing portions, the

connecting members being deformable to draw the fixing portions together wherein the connecting members substantially maintain their position after deformation; wherein the connecting members are deformable symmetrically with respect to the a line extending through the center of the pair of fixing portions such that the fixing portions are drawn toward one another along the line; wherein the connecting members are parallel to each other prior to being deformed; wherein each connecting member has at least one point of weakness at which bending of the connecting member occurs in preference to elsewhere on the connecting member; wherein each of the at least one point of weakness is a necked portion of the respective connecting member; wherein prior to deformation a transverse distance between outer lateral edges of the connecting members is about the same as an outer diameter of an annulus in view of Wevers for an easier deforming via crimping procedure with pliers due to the necked portion.

As to claim 25, Morgan and Wevers disclose the claimed invention except for wherein the two holes of the first fixing portion lie on a line perpendicular to the line extending through the centre of the fixing portions instead (e.g. FIG. 11 in the instant application).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to have modified the device of Wevers and Nicola with the two holes of the first fixing portion lying on a line perpendicular to the line extending through the centre of the fixing portions since the mere rearrangement parts (e.g. holes, here) of an invention involves only routine skill in the art, and additionally, the device of Wevers in

view of Nicola would have functioned properly and in a similar manner as before the modification was applied.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL T. SCHAPER** whose telephone number is (571)270-7413. The examiner can normally be reached on M-F, 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T. S./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775